

23 October 1975

Sen - Cong Relations

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Anti-Lobbying Law

1. You recently asked about the existence of an anti-lobbying law. 18 U.S.C. 1913, passed in 1946, provides as follows:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business. (Emphasis added)

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than \$500 or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment.

2. Activities specifically permitted by section 1913 include communications to Congress in response to their inquiries or agency-initiated requests for legislation or appropriations, submitted through the proper official channels, on matters deemed necessary for the efficient conduct of the public business. This would also seem to include the ability to comment on any legislation affecting the Agency,

though not internally generated. This type of activity not only seems permitted, but encouraged by Congress. Annually the Congress passes on the appropriations for the Office of Legislative Counsel with the Agency. Continued approval of such funding indicates Congress' consent to such liaison activity and arguably might be considered the "expressed authorization" to engage in lobbying activities required by section 1913.

3. The wording of the statutory provision could be far more precisely set forth. The point at which a Government employee moves over the line from providing information to the Congress to attempting to influence a vote is obviously most imprecise. One can rationalize that a briefing, letterwriting, or other activity is in the name of providing information. Certainly the Congress itself recognizes that the activity of senior officials and the legislative liaison offices of the various departments does in fact influence votes. To me the statute is mischievous in that it prohibits what in fact obviously goes on. Furthermore, there has never been a prosecution under this provision.

4. As a matter of interest, existing lobbyists registration laws (2 U.S.C. 267) specifically except from registration requirements Government officers acting in their official capacities. Moreover, there are several omnibus lobbying bills now pending before Congress. These bills would require the registration of lobbyists with the Comptroller General. While these bills leave 18 U.S.C. 1913 intact, they also specifically except "a communication of solicitation by an officer or employee of the Executive branch acting in his official capacity...." Thus, there is implicit recognition that Government officials properly engage in activities in the course of their official duties which might otherwise be considered "lobbying."

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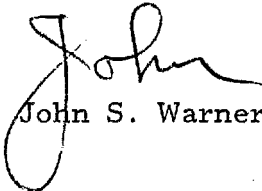
JOHN S. WARNER
General Counsel

cc: OLC

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APPROVAL		DISPATCH	RECOMMENDATION		
COMMENT		FILE	RETURN		
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Remarks:					
<p><i>Great memo. I especially like the reference to the provisions of 18 U.S.C. 1913 as "mischievous"</i></p>					
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Remarks: To be attached to copy of OGC memo to DCI subj: Anti-Lobbying Law (OGC 75-3926).			
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Remarks:			
<p>Bill:</p> <p>Attached is a brief memorandum on the anti-lobbying law. You had also asked if a breakfast for congressmen would be a violation. I think it is no more a violation than that portion of your salary paid for the time you devote to briefing congressmen.</p> <p> John S. Warner</p>			
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